IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15342 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BILIYA BILESHWAR ASHRAM TRUST

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 15342 of 2003

MR BIPIN I MEHTA for Petitioner No. 1

MR HD DAVE, AGP, for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 24/02/2004

ORAL JUDGEMENT

Heard learned advocate Shri Bipin Mehta appearing for the petitioner and learned AGP Shri H.D. Dave for the

respondents.

2. The petitioner is a trust, which has been aggrieved by an order dated 18th August/3rd October, 2003 passed by the Jt. Secretary (Appeals), Revenue Department, State of Gujarat, whereby an order dated 21st May 2001 passed by the Collector, Banaskantha, has been confirmed. By the order dated 21.5.2001 passed by the Collector, Banaskantha, the sale effected in respect of the land bearing Survey No. 72 admeasuring 1 acre 25 gunthas in favour of the petitioner trust had been cancelled.

3. It has been submitted by learned advocate Shri Bipin Mehta appearing for the petitioner that the petitioner trust has been registered under the provisions of the Bombay Public Trusts Act, 1950 and the said trust has been rendering services to the pilgrims, who visit Ambaji. The land in question was sold to the petitioner-Trust subject to certain conditions. The land was to be used for charitable/religious purposes, but it was reported to the Collector, Banaskantha, that business of marble cutting was going on on the land in question and, therefore, after hearing the concerned parties and looking to the facts of the case, by an order dated 21.5.2001, the Collector, Banaskantha, had cancelled the sale, whereby the land was transferred to the petitioner. The said order was challenged before the State of Gujarat by filing a revision application and the said revision application has been dismissed by the impugned order.

4. The learned advocate has submitted that in fact no business of marble cutting was done as observed by the Collector, Banaskantha. It has been submitted by him that in pursuance of instructions given by the Collector, Banaskantha, the concerned Mamlatdar had visited the land in question and in absence of the trustees of the petitioner trust, he had drawn a panchnama, showing that some marbles were lying on the land in question. As trustees were not present when the said panchnama was drawn, a request had been made by the petitioner trust for drawing another panchnama, and in accordance with the said request, the Mamlatdar, Danta, had drawn another panchnama. The second panchnama, which was drawn in presence of the trustees on 13.3.2001, which is at Annexure 'C' to the petition, and is forming part of the record of the Collector's office, which was not looked into by the revisional authority while rejecting the revision application.

5. It has been submitted by the learned advocate

that the second panchnama had been drawn by the Mamlatdar, Danta, in the presence of the Circle Officer, Ambaji, and Talati-cum-Mantri, Kumbharia, and in presence of the trustees. If one looks at the said panchnama, it appears that a board of 'Brahmani Marble' was found near the land in question and some marble pieces were also found in the nearby area. It is worth noting that there was no electric connection with the petitioner trust. The learned advocate has submitted that marble cutting business is done by a firm, who is having its place of business in the adjoining land and as marble was being laid in the kitchen of the petitioner trust, some pieces of marble belonging to the petitioner trust were kept in the land. According to the learned advocate, without electricity supply, marble cutting business is not possible.

6. It has been submitted by him that the said panchnama has not at all been looked into by the revisional authority, though it was very much on record. It has been also submitted by the learned advocate that in fact no business of marble cutting was being done on the land in question. It has been further submitted by the learned advocate that the trustees of the trust do not have any intention to do any business on the land in question as the land has been given for use of charitable/religious purposes only. An undertaking before this court has been filed by Shri H.I. Patel, who is one of the trustees of the trust, stating that the premises in question was not used for marble cutting business and even in future the said premises will not be used for any purpose other than charitable purposes. The said undertaking is taken on record. It has been also submitted by the learned advocate that such an undertaking shall also be filed before the Collector, Banaskantha.

7. Looking to the aforestated facts and more particularly in view of the fact that the panchnama dated 13.3.2001, which was drawn in presence of the trustees of petitioner trust and Circle Officer, Ambaji and Talati-cum-Mantri, Khumbaria, has not been examined either by the revisional authority or by the Collector, Banaskantha, the impugned orders suffer from the vice of non-application of mind and, therefore, both the orders are quashed and set aside and the matter is remanded to the Collector, Banaskantha, to look into the matter afresh and pass appropriate order. The Collector, Banaskantha, shall also take on record the undertaking, which might be filed on behalf of the petitioner trust.

8. In view of the above order, the petition stands disposed of as allowed. Rule is made absolute to the above extent with no order as to costs.

(A.R. Dave, J.)

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